

ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY

BILL NO. O-08-3

SPONSORED BY: Councilor Cadigan

1 **ORDINANCE**
2 **AMENDING THE ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY**
3 **AUTHORITY WATER WASTE ORDINANCE; SECTION 4.**

4 NOW , THEREFORE, BE IT ORDAINED BY THE BOARD, THE GOVERNING
5 BODY OF THE AUTHORITY

6 SECTION 1. Section 4; the Albuquerque Bernalillo County Water Waste
7 Ordinance is amended as follows:

8 4-1-1. SHORT TITLE.

9 This article shall be known as the "Water Waste Ordinance."

10 4-1-2. INTENT.

11 (A) To assist in reducing overall per capita water use by 40%.

12 (B) To reduce yard irrigation and irrigation-related water waste, which comprise
13 over 40% of the total annual water usage. To reduce peak summer usage, which is two
14 to three times winter usage and determines the need for capital facilities to adequately
15 meet system demand.

16 (C) To reduce water waste; i.e., overwatering, inefficient watering, or release of
17 water which generates fugitive water in the public right-of-way. To reduce damage to
18 publicly owned streets and the public expenditures necessary to repair the damage
19 caused by this wasted water. To increase street safety by reducing the potential of
20 frozen water on public right-of-way.

21 (D) To acknowledge that water conservation is easier to accomplish, both
22 financially and practically, in the design and construction of new buildings than it is
23 through the retrofitting of existing buildings and that new construction should therefore
24 be held to a higher conservation standard.

25 4-1-3. DEFINITIONS.

[+Bracketed/Underscored Material+] - New
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1 For the purpose of this article, the following definitions shall apply unless the context
2 clearly indicates or requires a different meaning.

3 AUTHORITY. The Albuquerque Bernalillo County Water Utility Authority or its
4 authorized agent. It includes the water and wastewater facilities and all operations and
5 management of such facilities necessary to provide water and wastewater service in the
6 Service Area.

7 BUBBLERS. Irrigation heads which deliver water directly to the soil adjacent to
8 the heads.

9 CURBSIDE CAR WASHING. Car washing near a public right-of-way, hose
10 sweeping, charity or fundraiser car washes, car washing on dealer lots.

11 CUSTOMER. Any person, association, corporation or other entity receiving
12 Authority service.

13 DRIP IRRIGATION. Low pressure, low volume irrigation applied slowly, near or
14 at ground level to minimize runoff and loss to evaporation.

15 DROUGHT. Drought occurs when there is insufficient precipitation combined with
16 other environmental factors that cause an increase of overall water usage.

17 DROUGHT MANAGEMENT STRATEGY. The Authority's Drought Management
18 Plan which contains four different drought severity levels.

19 EXECUTIVE DIRECTOR. The Executive Director of the Authority or his/her
20 designee.

21 FUGITIVE WATER. The pumping, flow, release, escape, or leakage of any water
22 from any pipe, valve, faucet, connection, diversion, well, or any facility for the purposes
23 of water supply, transport, storage, disposal, recreational, cleaning process or delivery
24 onto adjacent property or the public right-of-way.

25 HAND WATERING. The application of water for irrigation purposes through a
26 hand-held hose.

27 INFILTRATION RATE. The amount of water absorbed by the soil per unit of time,
28 usually expressed in inches per hour.

29 INSPECTION. An entry into and examination of premises for the purpose of
30 ascertaining the existence or nonexistence of violations of this article.

31 INTER-SEEDED. Seeding of an area within an existing turf area to repair
32 damage. This type of process is also known as re-seeding.

1 MISTER. A device that produces a cooling effect by emitting fine particles of
2 water into the air in the form of a mist.

3 NEW CONSTRUCTION. Any new residential or commercial building.

4 NEW CUSTOMER. Any person, association, corporation or other entity obtaining
5 Authority service for New Construction.

6 NEWLY SEEDED. Seed planted in a barren area with the intent of establishing a
7 turf area.

8 PUBLIC RIGHT-OF-WAY. The area of land acquired or obtained by the city,
9 county, or state primarily for the use of the public for the movement of people, goods,
10 vehicles, or storm water. For the purposes of this article the public right-of-way shall
11 include sidewalks, curbs, streets, and storm water drainage inlets.

12 RESPONSIBLE PARTY. The owner, manager, supervisor, or person who
13 receives the water bill, or person in charge of the property, facility, or operation during
14 the period of time the violation(s) is observed.

15 RUNOFF. Water which is not absorbed by the soil or landscape to which it is
16 applied. Runoff occurs when water is applied too quickly (application rate exceeds
17 infiltration rate), particularly if there is a severe slope. This article does not apply to
18 stormwater runoff which is created by natural precipitation rather than human-caused or
19 applied water use.

20 SERVICE AREA. All areas that are served or may be served in the future by the
21 Authority.

22 SHUT-OFF NOZZLE. Device attached to end of hose that completely shuts off
23 the flow of water.

24 SPRAY IRRIGATION. The application of water to landscaping by means of a
25 device that projects water through the air in the form of small particles or droplets.

26 VALVE. A device used to control the flow of water in the irrigation system.

27 WATER WASTE. The nonbeneficial use of water. Nonbeneficial uses include but
28 are not restricted to:

29 (1) Landscape water applied in such a manner, rate and/or quantity that it
30 overflows the landscaped area being watered and runs onto adjacent property or public
31 right-of-way;

(2) Landscape water which leaves a sprinkler, sprinkler system, or other application device in such a manner or direction as to spray onto adjacent property or public right-of-way;

(3) Washing of vehicles, equipment, or hard surfaces such as parking lots, aprons, pads, driveways, or other surfaced areas when water is applied in sufficient quantity to flow from that surface onto adjacent property or the public right-of-way;

(4) Water applied in sufficient quantity to cause ponding on impervious surfaces.

4-1-4. WATERING RESTRICTIONS.

These restrictions apply to all customers within the Authority's service area.

(A) All spray irrigation during the period beginning on April 1 and ending on October 31 of each year must occur between 7:00 p.m. and 11:00 a.m. This restriction shall not apply to drip irrigation and low precipitation bubblers, hand watering, or watering of containerized plants and plant stock.

(B) All spray irrigation during the months of November 1 through March 31 must occur between 10:00 a.m. and 2:00 p.m. This restriction shall not apply to drip irrigation and low precipitation bubblers, hand watering, or watering containerized plants and plant stock. This restriction shall not apply to golf courses or parks that are in regular use or in use for a special event during these hours.

(C) Shutoff nozzles are required on any hoses used for hand watering, car washing or other outdoor uses.

(D) Restrictions in divisions (A) and (B) above do not apply to the following:

(1) Outdoor irrigation necessary for the establishment of newly sodded lawns and landscaping within the first 30 days of planting upon the issuance of a Watering Restriction Exemption;

(2) Outdoor irrigation necessary for the establishment of newly seeded lawns within the first 120 days of planting upon the issuance of a Watering Restriction Exemption.

(3) Outdoor irrigation necessary for the establishment of inter-seeded lawns within the first 45 days of planting upon the issuance of a Watering Restriction Exemption.

(4) Irrigation necessary for one day only where treatment with an application of chemicals requires immediate watering to preserve an existing landscape or to establish a new landscape;

(5) Water used to control dust or compact soil;

(6) Attended watering systems that have one or more repair or maintenance personnel present at the irrigated zone being serviced for purposes of inspecting system condition and function and/or repairing or maintaining the watering system.

4-1-5. WATER CONSERVATION REQUIREMENTS FOR NEW CONSTRUCTION.

These restrictions [+become effective on August 1, 2008 and +] apply to new customers within the Authority's service area [+where four or more housing units are constructed and to all new non-residential construction.+] Service shall not be provided to new customers if the new construction does not meet the[- -]requirements [+contained herein. Because the provision of service to new customers is prohibited without compliance with this Ordinance, the Executive Director shall ensure through regulation or agreement that these restrictions become a part of the building permitting process for each City, County, Village or other political subdivision in the Service Area.+] If after service is provided it is determined that a violation exists, including a change to the new construction that would have been a violation as of the date that service was first provided, the customer shall be subject to those fees set out in the penalty provisions of § 4-1-99. [--] [+An exemption+] may be granted pursuant to the provisions of this ordinance.

(A) New customers shall provide evidence, in a form acceptable to the Executive Director, that the new residential construction is designed so as to be able to achieve a maximum water use of 180 gallons per household per day.

(B) [+ It shall be presumed by the Executive Director that new construction is designed to meet the+] [--] 180 gallons per household per day standard [+if the new construction meets the following restrictions.+][--]

(1) Toilets [--] meet the standards of being high-efficiency toilets (HETs) as defined by the Environmental Protection Agency Water Sense program.

(2) Evaporative coolers [+are+] [--] recirculating and [--] have [--] thermostats and two-speed blowers. No evaporative coolers may be installed that require a continuous "bleed –off " water line.

(3) ~~[-Non-native grass-]~~[+Spray irrigation is not installed or utilized+]~~[-shall not be installed-]~~:

a) on slopes greater than 5:1~~[-]~~[+or+]

b) in areas smaller than 10 feet in any dimension.~~[- -]~~

(4) ~~[-The new construction is otherwise in -]~~[+] compliance with all applicable water conservation landscaping ordinances, rules and regulations of any local governmental body, municipality or county, in which the ~~[-new-]~~[+new+] construction is located.

(C) Any new construction of multi-family dwelling units, manufactured home rental community, mobile home parks and condominiums must provide for submetering ~~[-or separate metering-]~~[+or separate metering+] of each dwelling unit or rental unit for the measurement of the quantity of water consumed by future occupants of such units as of the date of enactment of this Ordinance. The property owner must issue a monthly water bill to each individual residence unit showing their water usage that month and billing them based upon their actual water usage. ~~[-All billing shall-]~~[+All billing shall+] include beginning and ending meter readings for the individual residence unit being billed.

Compliance with this provision is mandatory. Failure to comply with this provision shall subject the property owner to the penalty provisions of 4-1-99.

(D) All new construction shall provide for the capture of drainage from a minimum of 85% of the roofed area ~~[-or capture a sufficient amount of water to supply the irrigation needs of the proposed landscaping, whichever amount is smaller-]~~[+or capture a sufficient amount of water to supply the irrigation needs of the proposed landscaping, whichever amount is smaller+]

(1) New construction of 2,500 sq. ft. of heated area or greater shall install a cistern that is buried and is connected to a pump and a drip irrigation system to serve landscaped areas. Cisterns shall be sized to hold 1 gallon per square foot of roof area but this figure may be adjusted based on proposed landscaping. The capacity of the cistern shall be approved by the Executive Director.

(2) New construction smaller than 2,500 sq.ft. of heated area shall install rain barrels, cisterns or other water catchment basins.

4-1-6. WATER WASTE.

These restrictions apply to all customers within the Authority's service area.

(A) No person, firm, corporation, or municipal or other government facility or operation shall waste, cause or permit any water to be wasted.

(B) No person, firm, corporation, or municipal or other government facility or operation shall cause or permit the flow of fugitive water onto adjacent property or public right-of-way.

(C) The restrictions in divisions (A) and (B) of this section do not apply to the following:

(1) Storm runoff allowed under provisions of the City of Albuquerque or Bernalillo County drainage ordinances as currently adopted or subsequently amended;

(2) Flow resulting from temporary water supply system failures or malfunctions. These failures or malfunctions shall be repaired within 48 hours of notification or the system shut off until repair can be completed;

(3) Flow resulting from firefighting or routine inspection of fire hydrants or from fire training activities;

(4) Water applied as a dust control measure;

(5) Water applied to abate spills of flammable or otherwise hazardous materials, where water is the appropriate methodology;

(6) Water applied to prevent or abate health, safety, or accident hazards when alternate methods are not available;

(7) Flow resulting from routine inspection, operation, or maintenance of a utility water supply system;

(8) Water used in the course of installation or maintenance of traffic flow control devices;

(9) Water used for construction or maintenance activities where the application of water is the appropriate methodology and where no other practical alternative exists.

4-1-7. SPECIAL PERMITS

These restrictions apply to all customers within the Authority's service area.

(A) Use of Misters

(1) The use of misters shall require a special permit, issued by the Authority. The Executive Director shall develop regulations and administrative procedures for the issuance and conditions of such permits. The Executive Director shall have the authority to limit the number of permits or revoke permits as deemed necessary to protect the public interest.

(2) The use of misters without a permit, or in violation of permit conditions, shall constitute a violation of this article and shall be subject to the fee assessment processes described in §§ 4-1-8 and 4-1-99.

(3) Any person, firm, corporation, or municipal or other government facility selling, leasing, renting, installing or otherwise making misters available to any other person, firm, corporation, or municipal or other government facility shall provide notification to their customers of the special permit requirement for mister use. Notice may be delivered by prominently posting a sign at the point of purchase or by providing a document to each individual customer. The Authority shall provide approved language for such notification.

4-1-8. EXEMPTIONS AND APPEALS

The Executive Director shall be responsible for the enforcement of this article. The Executive Director may prescribe policies, rules, or regulations to carry out the intent and purposes of this article.

(A) Exemptions to § 4-1-4 (Watering Restrictions) and § 4-1-5 (Water Conservation Requirements for New Construction) and § 4-1-6 (Water Waste), and § 4-1-7 (Special Permits).

(1) Administrative exemptions to the restrictions in §§ 4-1-4, 4-1-5, 4-1-6 and 4-1-7 may be issued by the Executive Director or his/her designee, provided that the general intent of this article has been met, compliance with this article is proven to cause practical difficulties and unnecessary hardship, and all options for abatement through modified water management have been exhausted. The criteria to determine hardship shall include level of capital outlay and time required to be in compliance with this article.

(2) Water Waste Exemptions may be issued for a period not to exceed one year and shall stipulate both short-term corrective measures and a schedule for completion of long-term corrective measures. Variances may be renewed on an annual basis if long-term corrective measures cannot be completed within one year.

(3) Watering Restriction Exemptions may be issued for a period not to exceed 120 days to establish a turf area on properly prepared barren ground.

(4) Watering Restriction Exemptions may be issued for a period not to exceed 30 days to establish newly sodded turf and/or landscape.

1 (5) Watering Restriction Exemptions may be issued for a period not to
2 exceed 45 days to establish inter-seeded areas with an established turf area.

3 (6) Water Conservation Requirements for New Construction Exemptions
4 may be issued upon a showing that as of the date of adoption of the provision on Water
5 Conservation Requirements for New Construction, construction has been completed
6 past a stage where compliance is financially reasonable.

7 (B) Appeal of § 4-1-4 (Watering Restrictions) and § 4-1-5 (Water Conservation
8 Requirements for New Construction) and § 4-1-6 (Water Waste), and § 4-1-7 (Special
9 Permits) and § 4-1-8 (Exemptions). Any responsible party may appeal fees for violations
10 of §§ 4-1-4, 4-1-5, 4-1-6 and 4-1-7 and denials of service for violations of § 4-1-5 (Water
11 Conservation Requirements for New Construction) to the Executive Director or his/her
12 designee by filing an appeal within seven calendar days of receiving a notice of
13 violation. The notice of violation or denial of service shall provide information on the
14 right to appeal and the procedures to follow. The appeal shall identify the property and
15 state the grounds of appeal together with all material facts in support thereof. A filing fee
16 of \$50 shall be charged for any appeal and for current customers the fee shall be added
17 to the water bill in the event the violation is upheld by the Executive Director or his/her
18 designee. When a hearing is requested, the Executive Director or his/her designee shall
19 send written notice by certified mail, return receipt requested, to the appellant of the
20 time and place of the hearing. At the hearing the appellant shall have the right to
21 present evidence as to the alleged facts upon which the Executive Director or his/her
22 designee based the determination of the need for assessment of fee or restriction of
23 service and any other facts which may aid the Executive Director or his/her designee in
24 determining whether this article has been violated. The Executive Director or his/her
25 designee shall, within seven working days following the hearing, issue a written decision
26 specifying the fee, if appropriate, and the action that must be taken to avoid additional
27 penalty. Fees will be void and service will not be restricted if the written decision is not
28 issued within seven working days.

29 (C) Judicial Review. The exclusive remedy for parties dissatisfied with the action
30 of the Executive Director or his/her designee on §§ 4-1-4, 4-1-5, 4-1-6 4-1-7 or the
31 denial of an exemption under 4-1-8 shall be the filing of a petition for a writ of certiorari
32 with the State District Court.

33 4-1-9. DROUGHT RESPONSE

1 (A) The Drought Management Strategy defines four levels of drought. The
2 determination of the proper response to any level of drought must be based on factors
3 beyond the defined level of drought.

4 (B) When any level of drought is declared the Authority may, in its sole discretion
5 impose any of the following drought management provisions. The Authority delegates to
6 the Executive Director the power to determine which of these drought management
7 provisions to impose. The range of drought management provisions available to the
8 Executive Director shall include but not be limited to the following:

9 (1) Limit the number of days per week that customers can water to three,
10 two or one day a week by limiting properties with certain numbers in their addresses to
11 watering on specific days. The Executive Director may in his discretion exclude
12 properties under the same terms as are provided for at 4-1-4 (D).

13 (2) Prohibit curbside car washing.

14 (3) Ban outdoor ornamental water displays and fountains subject to an
15 exemption approved by the Executive Director for specific public displays and fountains.

16 (4) Ban the addition of water to any swimming pool and/or require a pool
17 cover be used at any time a pool is not in use.

18 (5) Ban the planting of new turf and/or sod.

19 (6) Other voluntary or mandatory drought management provisions as
20 provided for in the Drought Management Strategy.

21 In the event the individual property to be assessed a fee is sub-metered through
22 a master meter account(s), the property in violation will be assessed the fee in
23 accordance with this ordinance through the master meter accounts(s). It shall be the
24 responsibility of the master metered account(s) to assess the collect the fee from the
25 individual sub metered property.

26 (C) When any level of drought is declared the Authority the Authority delegates to
27 the Executive Director as a drought management provision the discretion to increase
28 water waste fees provided for in this ordinance by a factor of two, three, four or more as
29 may be necessary to assist in water waste reduction during a drought.

30 (D) The Board shall have total discretion to declare a drought by considering the
31 factors set out in the Drought Management Strategy and such evidence as it shall
32 choose to consider. The Board shall have the power to raise and lower the declared
33 Drought Level. On November 1 of any year in which drought has been declared the

1 declaration and all drought management provisions shall expire until the Board makes a
2 new designation of drought and the Executive Director establishes new drought
3 management provisions.

4 (E) Drought management provisions shall become effective upon posting on the
5 Authority's website and publication in a newspaper of general circulation in the Service
6 Area.

7 4-1-10. FEES; ASSESSMENT

8 (A) Fees. Any responsible party who violates any of the provisions of §§ 4-1-4, 4-
9 1-5, 4-1-6 or 4-1-7 shall be subject to progressively higher fees until the violation ceases
10 or a variance is granted. The assessment of fees shall be consecutive for violations
11 separated by less than five calendar years. Fees shall be suspended pending the
12 outcome of an appeal or variance request.

13 (B) Assessment of Fees. Assessment of fees for violations of the regulations in
14 §§ 4-1-4, 4-1-5, 4-1-6 or 4-1-7 will be through the utility bills for the responsible party's
15 billing account. Fees shall be assessed to the account within 15 days following
16 expiration of the appeal period or issuance of appeal findings. Responsible parties shall
17 be notified of the fee through certified mail within 15 days of the assessment. Fees must
18 be paid within the normal payment period allowed by the utility billing system.

19 (C) In lieu of fees for violations of §§ 4-1-4 and 4-1-6, the responsible party may
20 have a landscape water audit performed by an authorized landscape irrigation auditor,
21 certified by the Irrigation Association. The audit will be conducted in accordance with the
22 current edition of the Landscape Auditor's Handbook. The audit must be performed
23 within 30 days of notification of violation and the audit recommendation must be
24 implemented within 60 days of the audit. If these deadlines are not met, the fees for
25 violation will apply.

26 4-1-99. PENALTY.

27 (A) The schedule for assessment of fees for a violation of §§ 4-1-4, 4-1-5, 4-1-6
28 or 4-1-7 shall be as follows:

- 29 (1) First observed violation - \$20;
- 30 (2) Second observed violation - \$50;
- 31 (3) Third observed violation - \$100;
- 32 (4) Fourth observed violation - \$300;
- 33 (5) Fifth observed violation - \$400;

- 1 (6) Sixth observed violation - \$600;
- 2 (7) Seventh observed violation - \$800;
- 3 (8) Eighth observed violation - \$1,000;
- 4 (9) Ninth observed violation - \$2,000
- 5 (10) Each observed violation over the ninth - \$2,000 plus an additional
- 6 \$1,000 each violation after that (e.g. \$3,000 for the tenth violation, \$4,000 for the
- 7 eleventh violation, etc.)

8 (B) For the purpose of assessing fees for violations of §§ 4-1-4, 4-1-5, 4-1-6 or
9 4-1-7, any previous violation shall not be considered if:

- 10 (1) A period of five years has elapsed since the violation was incurred; or
- 11 (2) The property is acquired by a new owner.

12 (C) Any person who violates the provisions of this article for which no other
13 penalty is set forth, shall be subject to the general penalty provision of this code set
14 forth in § 4-1-99.

15 Section 2. SEVERABILITY CLAUSE. If any section, paragraph, sentence,
16 clause, work or phrase of this Ordinance is for any reason held to be invalid or
17 unenforceable by any court of competent jurisdiction, such decision shall not affect the
18 validity of the remaining provisions of this Ordinance. The Authority hereby declares
19 that it would have passed this Ordinance and each Section, paragraph, sentence,
20 clause, word or phrase thereof irrespective of any provision being declared
21 unconstitutional or otherwise invalid.

22 Section 3. EFFECTIVE DATE AND PUBLICATION. This Ordinance shall
23 become effective five days after publication by title and general summary.

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